



County of San Diego

SOLID WASTE LOCAL ENFORCEMENT AGENCY

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DATE: May 11, 2011

TO: Jack Miller
Director, Department of Environmental Health

FROM: County of San Diego Solid Waste Local Enforcement Agency

SUBJECT: GREGORY CANYON LANDFILL
SOLID WASTE FACILITY PERMIT

OVERVIEW

This memorandum recommends that you: (1) Consider the overriding considerations and the significant and unavoidable impacts identified and determine that the benefits outweigh and override these impacts. (2) Certify that this application package is consistent with CEQA and is consistent with the Certified Revised Final Environmental Impact Report (and associated Addendums), and (3) Submit the proposed permit and Solid Waste Facility Permit application package to the California Department of Resources Recycling and Recovery (CalRecycle) for concurrence.

HISTORY

2002 EIR

The Final Environmental Impact Review (FEIR) dated December 2002 was certified by the Director of the Department of Environmental Health (DEH) on February 6, 2003 for the Gregory Canyon Landfill. The adequacy of the certified FEIR was subsequently challenged in a CEQA lawsuit. On October 3, 2005 the Court issued a final minute order finding most of the FEIR adequate and in compliance with CEQA but required revisions in three areas:

- The Court held that insufficient opportunity for public comment had been provided before the FEIR was certified, because traffic information contained in the 2003 Traffic Needs Assessment Study of Tribal Development Projects in the San Diego Region had not been circulated for comment.
- The Court also held that the FEIR did not adequately identify the sources of water necessary to construct and operate the landfill and did not adequately analyze the impacts of obtaining that water.
- Finally, the Court required that mitigation measures for biological resources be modified as necessary to reflect the requirements of Section 5R of Proposition C, concerning the preservation of open space.

On January 20, 2006, the Court issued a final judgment and writ of mandate ordering decertification of the FEIR and requiring additional environmental review to address the three matters noted in the Court's order. The project proponent modified the project to rely on percolating ground water from on-site wells screened within the fractured bedrock zone and on imported recycled water, to incorporate additional biological mitigation, and to incorporate additional traffic mitigation.

Revised Final EIR

The LEA conducted additional analysis and circulated a Revised Partial Draft EIR for comment in July and August of 2006. Over 1,000 separate comments were received from more than 150 persons and organizations. These comments were carefully considered and revisions were made to the Revised Partial EIR in response to these comments and to reflect additional review by LEA staff and the project proponent. The Revised Partial EIR was provided to the Director of DEH with those revisions. The LEA also reviewed the March 28, 2007 Final Tribal Environmental Impact Report for the Pala Casino and Spa Expansion Project and included it in that submittal for consideration.

On April 30, 2007 a Staff Report and a proposed Revised Final EIR, incorporating the FEIR, the Revised Partial Draft EIR, comments on and responses to comments on the Partial Draft EIR, and technical appendices, were submitted for the Director's review. On May 31, 2007, the Director of DEH decided that the Revised Partial Draft EIR for the Gregory Canyon Landfill with associated comments and responses to comments had met the direction of the Court, and certified the RFEIR. The County and the project proponent returned to Court and proposed that the writ of mandate had been satisfied.

On February 11, 2008, the Court issued a further decision and order. This decision upheld the additional environmental analysis included in the RFEIR for the proposed Gregory Canyon Landfill related to traffic and biological mitigation. The environmental analysis for the water supply (related to the use of recycled water) was found to be incomplete. The decision required an assessment of the environmental impacts, if any, associated with the project's proposed use of the recycled water provided under the Olivenhain Municipal Water District (OMWD) contract. The court specified that this assessment should include an analysis of the baseline conditions pertaining to OMWD's use of recycled water and the impacts, if any, on the existing uses of OMWD's recycled water. The Court also indicated that the environmental review should provide a "meaningful discussion of the potential impacts of the OMWD contract on existing customers or existing uses of the recycled water."

2008 Addendum

In response to the Court's order, the project proponent and LEA staff did additional analysis. Baseline recycled water supply and use conditions were determined, and scenarios that added the Gregory Canyon Landfill to that baseline were defined and quantified. The impacts from recycled water deliveries to the landfill site on other OMWD recycled water customers were then determined, as required by the Court's order.

The 2008 Addendum concluded that there is adequate recycled water to meet the demands of OMWD's existing customers or existing uses of recycled water after including deliveries to the landfill site, and that OMWD is able to provide 193 acre feet per year (AFY) of recycled water to the landfill site without causing a significant impact to its existing customers or existing uses of recycled water. Based on the information presented in the 2008 Addendum, no significant environmental impacts that were not identified in the FEIR or the RFEIR would result, and no previously identified significant impacts would be substantially more severe in light of this analysis.

Following the Court's February 11, 2008 order, petitioners in this litigation submitted additional comments, documents, and reports.

Appendix C to the 2008 Addendum is a July 14, 2008 letter from the County's CEQA consultant that discusses the additional documents and reports that were submitted by petitioners. This letter briefly discusses potential long-term impacts to water supply from global climate change, and also considers environmental concerns in the Bay-Delta area, along with regional, state and federal initiatives to address these concerns. Based on the information provided, the letter report indicates that there is no sufficient basis to conclude that a potentially significant impact to OMWD's existing recycled water uses or existing customers would occur due to these concerns.

Recertification of the RFEIR with 2008 Addendum

The Court's February 11, 2008 order did not direct the Director of DEH to decertify the RFEIR, and no such action was taken. Neither CEQA nor the Court's order expressly requires that a previously certified EIR be recertified when an Addendum is prepared and approved. Staff's research indicates that in other jurisdictions EIRs are sometimes recertified in these circumstances, and sometimes not. In this case, the Court determined that the RFEIR did not contain an adequate discussion of the potential environmental impacts of recycled water use by the project. However, additional analysis showed that no significant impacts would result from such use, which means a supplemental EIR was not required to be prepared, circulated and certified.

Staff and County Counsel did not believe recertification of the RFEIR with the 2008 Addendum was required by CEQA. However, the DEH Director recertified the RFEIR with the 2008 Addendum to the extent necessary on August 8, 2008.

2009 Addendum

The 2008 Addendum discussed and analyzed the trucking and use of recycled water from the Olivenhain Municipal Water District (OMWD) for the construction operation and closure of the landfill. In July of 2009 OMWD set aside and voided its approval and execution of the recycled water agreement with Gregory Canyon.

The 2009 Addendum was prepared in response to the loss of the water agreement with OMWD. This addendum completed an updated review of the Project's water demands, and identified sources of water to satisfy that demand.

2010 Addendum

On January 13, 2010 the U.S. Army Corps of Engineers (ACOE) issued a revised jurisdictional determination, stating for the first time that it considered much of the drainage in the main stem of Gregory Canyon to be waters of the United States. The 2010 Addendum was prepared to respond to these events by providing the most up-to-date information available on the scope of federal and state jurisdiction over waters on the landfill site, and to analyze any impacts arising from the updated information.

CONCLUSIONS OF THE REVISED FINAL ENVIRONMENTAL IMPACT REPORT

Significant Impacts that Cannot Be Mitigated

The FEIR concluded that the project would cause significant impacts that could not be mitigated to a level of less than significant in five areas. Those areas were Traffic and Circulation, Noise and Vibration, Air Quality, Ethnohistory and Native American Interests, and Aesthetics. The RFEIR identifies additional significant impacts in the areas of traffic and circulation, and noise and vibration. Some but not all of these additional impacts could be mitigated to a level of less than significant. An additional potential impact to Archeological and Cultural Resources has been identified in the RFEIR as significant, but this impact would occur only if Gregory Mountain or Medicine Rock were added to the National Register of Historic Places. If this impact were to occur, it could not be mitigated to a level of less than significant. (Chapter 11, RFEIR)

The subsections that follow summarize significant impacts and mitigation measures discussed in the five key impact areas in the FEIR, and in corresponding sections of the RFEIR.

A. TRAFFIC AND CIRCULATION

FEIR SECTION 4.5

The analysis of long-term operational impacts assumed a worst-case scenario, in which all of the daily trips included in the project description would take place. This scenario used the highest daily level of waste allowed, 5000 tons per day, along with concurrent construction transport, for total passenger car equivalent trips of 2,085 trips per day. (See page 4.5-10 of the FEIR for more discussion.) Implementation of the mitigation measures discussed on pages 4.5-26 through 4.5-28 of the FEIR were determined to reduce project-related traffic impacts to a less than significant level.

However, cumulative traffic impacts (impacts from the landfill project in addition to other expected projects in the area) were determined to be significant and not mitigable to a level of less than significant unless SR 76 is widened to four lanes (pages 4.5-1 through pages 4.5-28 of the FEIR). Project traffic could worsen sections of poor road surface along SR 76 between Interstate 15 and the project access road, but this would be mitigated to a level of less than significant through pavement improvements by the applicant as needed. The project traffic,

combined with the existing traffic plus traffic from other proposed developments, would adversely affect the Interstate 15 northbound to/SR76 eastbound ramp by increased traffic at this ramp. SR76 would exceed the acceptable traffic loading for the existing highway conditions in the long term cumulative scenario.

The project applicant proposed to mitigate these cumulative impacts by (1) making a fair share contribution for the costs to provide four lanes on SR 76 from the western boundary of the landfill site to the project access; (2) making a fair share contribution to improvements at the SR 76/I-15 northbound intersection, (3) making a fair share contribution to pavement improvements consistent with Caltrans requirements prior to completion of widening of SR 76 (if determined necessary), and (4) making an irrevocable offer of dedication of a right of way for the widening of SR 76 on the landfill site. However, since there is no certainty about when Caltrans might construct these improvements and what fair share contributions will be required, the FEIR concludes that cumulative traffic impacts are significant and not mitigable. The fair share contribution will be determined by the County, in accordance with Proposition C and County policy and procedures.

RFEIR Section 4.5

Section 4.5 of the RFEIR was extensively changed from the FEIR, with 39 pages of new and revised text and tables. The RFEIR addresses traffic on I-15 and SR-76 based on a new traffic analysis, which incorporated higher levels of current / pre-project traffic. The RFEIR also examined the new impacts of importing recycled water by truck from the Olivenhain Reservoir Site. This import of recycled water from Olivenhain is no longer proposed as part of the project.

This new analysis shows that the segment of SR 76 west of I-15 currently operates in an unacceptable Level of Service condition (i.e., degree of congestion) of LOS E during the afternoon hours between noon and 5:00 P.M. with and without the project traffic. Although the project would add fewer than 200 trips per day to this road segment, and therefore does not result in a significant direct impact to SR 76 west of I-15 based upon the County's significance criteria, the project would incrementally add traffic to the existing unacceptable level of service on this segment of SR 76. The project would be required to pay the County's Transportation Impact Fee to fund its fair share of this traffic condition. However, because of the uncertainty of the implementation of future improvements to SR 76 west of I-15, the project-related traffic impact is considered significant and unavoidable.

In addition, the segment of I-15 between Pomerado Road and Carmel Mountain Road currently operates in an unacceptable LOS F condition, with and without the project traffic. Although the project is not required to mitigate this impact to I-15 based upon the County's significance criteria, the project would incrementally add traffic to the existing unacceptable level of service on this segment of I-15. The project would be required to pay the county's Transportation Impact Fee to fund its fair share of this traffic condition. However, because of the uncertainty of the implementation of future improvements to I-15, the project-related traffic impact is considered significant and unavoidable.

SR 76 east of I-15 to the landfill access road was projected to operate at LOS E during afternoon peak hours when project traffic was added. Additional mitigation was proposed, in the form of limitations on project related traffic during these peak hours, to maintain LOS D on these segments. This mitigation measure reduced this project-related impact to less than significant.

In the cumulative analysis (near term, 2020 buildout, and Year 2030), many roadway segments along the SR 76 and I-15 corridors would operate at LOS E or F during peak A.M. and P.M. periods, with and without the project. Therefore, the project would contribute to cumulatively significant impacts on SR 76 and I-15, and intersections. The project includes mitigation measures for these cumulative impacts in addition to those provided in the FEIR, including implementation of the mitigation measure to pay the County's Transportation Impact Fee. However, because of the uncertainty of the implementation of future improvements, the cumulative traffic impact is considered significant and unavoidable.

The FEIR and RFEIR concluded that this project would not have a significant adverse effect on traffic safety. This topic is discussed further below in the section on steps taken relative to comments on the pending permit application package.

B. NOISE AND VIBRATION

FEIR Section 4.6

The project design features and the mitigation measures (discussed on pages 4.6-37 through 4.6-39) would reduce to a level of insignificance most of the impacts to adjacent sensitive receptors from construction and operational noise and vibration. The adjacent sensitive receptors are wildlife habitats and nearby residential properties. The design and mitigation measures would not mitigate the noise impacts from project-generated traffic on residences. Potential noise impacts to wildlife habitat are mitigated to a level of less than significant.

Project-generated traffic would adversely impact these residences along SR 76 since project generated traffic would increase the noise levels in an existing degraded noise environment (page 4.6-5). In addition, project-generated traffic, when added to traffic from other future projects in the area, would contribute to significant cumulative adverse noise impacts at the existing cluster of residences between I-15 and Rice Canyon Road and one additional residence on the north side of SR 76 just west of the project site.

This site is on a corridor, SR76, which has traffic generated noise levels that already exceed the County standard. The project would contribute to this degraded noise environment, and the mitigation measure proposed for residences along SR76 is the installation of a sound wall (e.g., fence, masonry wall, earth berm, or vegetation) (pages 4.6-21).

The applicant does not own the property and the property owner, where the wall would be needed, objects to a sound wall. This makes the implementation of the mitigation measure not feasible (page 4.6-21). Thus, traffic from the project would have a significant project-level noise impact on residences along SR 76 between I-15 and the landfill site (see Chapter 11 of the FEIR), as well as contribute to a cumulatively significant noise impact on these residences.

RFEIR Section 4.6

The revised analysis concludes that noise impacts from construction of the landfill would not change, despite some change in project design. Project-related traffic would continue to contribute to an existing degraded noise environment, and mitigation to a level of less than significant along SR 76 could not be assured without new sound walls on private property, as described above for the FEIR.¹ Cumulative traffic noise impacts would be slightly greater than projected in 2003, because of the increased baseline levels of traffic incorporated into the analysis. The RFEIR quantifies these changes.

While contributions from the project are below the County significance thresholds, the project would contribute to an existing noise environment above the County standard of 60 dBA CNEL (Community Noise Equivalent Levels) at existing residences. The project would result in significant and unavoidable project-related and cumulative traffic noise impacts to the existing residences along these road segments. The magnitude of the increase in noise caused by this project traffic is quantified in the RFEIR.

C. AIR QUALITY*FEIR Section 4.7*

Mitigation measures and project design features address the landfill gas control requirements, odor control plan and dust control from project operations. See pages 4.7-38 through 4.7-41 of the FEIR. These design features and mitigation measures should reduce these potential impacts to a less than significant level.

However, exhaust from earthmoving equipment and other equipment would cause project-level and cumulatively significant impacts from the emissions of Particulate Matter (PM₁₀) and Oxides of Nitrogen (NO_x) during construction and operation of the landfill. As discussed on pages 4.7-40 through 4.7-41 of the FEIR, these impacts cannot be avoided because the thresholds for PM₁₀ and NO_x would be exceeded. No other feasible mitigation measures are available to reduce these impacts to a level of insignificance. Therefore the project would have an unavoidable significant impact on air quality during both landfill initial construction and landfill operations.

RFEIR

¹ The proposed permit presented to you with this staff report contains an additional mitigation measure for the direct impact of the project on traffic-related noise along SR-76. Specifically, the operator will make additional offers to mitigate noise to the owners of significantly affected residences prior to the start of landfill construction, and again after the landfill is operating. In addition, these offers will encompass alternative sound mitigation measures (e.g., vegetative barriers, fences, and sound-attenuating windows and doors) in addition to sound walls. Because it is uncertain whether these additional offers will be accepted, the direct impacts of the project on traffic-related noise remains significant and unmitigated.

No changes were made in the RFEIR to Section 4.7 of the FEIR. With respect to the landfill site, because project-related traffic did not change, there would be no change to the analysis of air quality impacts contained in the FEIR. The additional construction activities at the landfill site related to the double composite liner system and recycled water facilities were analyzed and determined to not create any additional significant air quality impacts beyond those analyzed in the FEIR.

On March 19, 2007, the Land Use and Environment Group of the County of San Diego, Department of Planning and Land Use and the Department of Public Works adopted new Guidelines for Determining Significance and Report Format and Content Requirements for Air Quality (Guidelines). The new Guidelines provide guidance for evaluating significant environmental effects of a proposed development project on air quality in the County.

LEA staff has reviewed the Guidelines. In general, the environmental analysis completed for the RFEIR conforms to the newly released Guidelines, and thus, remains satisfactory. However, one part of the newly adopted Guidelines, relative to $PM_{2.5}$, was not addressed in the RFEIR as it was an entirely new addition to the County's thresholds. As a result, LEA staff has considered whether the RFEIR should be further revised to address this new air quality significance guideline.

After consultation with County Counsel, LEA staff has determined that additional revisions to the RFEIR are not required by CEQA. The new Guidelines were released on March 19, 2007, after the RFEIR was in production. This weighs against their consideration in the document. Pursuant to the CEQA Guidelines, although thresholds of significance are to be used in the determination of significance of environmental effects, those thresholds are applied to a baseline for determining significance, which baseline must be established in the EIR. See, 14 Cal.Code Regs. §§ 15064.7; 15125.

As stated in the CEQA Guidelines, "[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time the environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant." See, 14 Cal.Code Regs. § 15125(a).

Since the environmental setting and the assessment of impact significance must be determined at a set time as laid out in the CEQA Guidelines, it is likewise important that the thresholds of significance also must be established at the same definitive time. In the absence of a determinative timeline for assessing impacts, the EIR process would otherwise be open to a continuous and never-ending review, as the environmental setting and the applicable thresholds could be edited and/or reexamined numerous times during the time it takes for an EIR to be certified by a lead agency.

Nonetheless, in order to provide you with full and complete information in reviewing the recommended action, LEA staff has reviewed the RFEIR, and concludes that, given the circumstances, the FEIR and the RFEIR adequately address $PM_{2.5}$.

The newly adopted Guidelines do not result in any changes to the physical environment caused by the proposed project. Rather, the newly adopted Guidelines recommend a new standard by which a project's air quality impacts may be measured. With regard to the previously analyzed impacts for the project, it should be noted that Section 4.7 of the FEIR and Section 4.15 of the RFEIR determined that the proposed project would result in significant and unavoidable air quality impacts, including adverse impacts from PM₁₀ emissions. The conclusion reached in the FEIR, which was not altered in the RFEIR, was not overturned by the court or included in its writ when the FEIR was reviewed in the prior litigation.

Because PM_{2.5} is a subset of PM₁₀, and potential impacts from PM₁₀ were fully analyzed in the FEIR, LEA staff have determined that the finding of a significant and unavoidable air quality impact made in the FEIR and RFEIR would not change based on the new PM_{2.5} Guideline.

LEA staff notes that the proposed project already includes a number of project design features to minimize PM_{2.5} emissions that go beyond the requirements of applicable regulations. These measures include the use of diesel particulate traps on construction vehicles at the landfill, and a requirement to undertake reasonable efforts to equip recycled water trucks with diesel particulate traps. SDAPCD rules effectively compel the use of particulate traps only for stationary diesel engines; neither SDAPCD nor South Coast AQMD rules currently require the use of diesel particulate traps on construction vehicles or on-road vehicles.

LEA staff believes that it is unlikely that any further analysis would disclose additional feasible project design features or mitigation measures that would reduce the impact to less than significant.

As a result, DEH LEA staff does not believe that additional revisions to the RFEIR are warranted as a result of the new Guidelines.

D. ETHNOHISTORY AND NATIVE AMERICAN INTERESTS

FEIR SECTION 4.12

The project could cause potential impacts to Native American cultural resources in an objective and subjective manner. The objective component is the extent to which a Native American resource is impacted based upon objective data from air quality, noise, dust, traffic and other objective studies. The subjective component reflects the judgment of the particular Native American Tribe on the impacts the project may have upon their traditional use of sites. Both criteria were used in this FEIR in evaluating impacts to the resources of the Luiseño Tribe of Native Americans impacted by this project.

Using traditional methods to measure objective data of air quality, noise and aesthetic impacts, the mitigation measures identified in the FEIR were sufficient to reduce these impacts to a level of less than significant. However, the Luiseño, believe that impacts of the project on their traditional uses of the site are significant. This belief is based on the subjective component of their traditional use of the site and their relationships to Gregory Mountain and Medicine Rock

(pages 4.12-5 through 4.12-6 of the FEIR). There would be long-term physical alterations to Gregory Canyon, which is at the base of the sacred Gregory Mountain cultural resource. Ongoing landfill operations could be disruptive to ongoing traditional tribal activities associated with Gregory Mountain.

No impacts to Gregory Mountain are considered acceptable to the Luiseño Tribes. The Luiseño people have indicated that the alterations of Gregory Canyon would contribute to the degradation of Medicine Rock and would have a significant adverse effect on this resource. At the time the FEIR was prepared the Luiseño Tribes were reluctant to discuss mitigation.

Based on input from Luiseño representatives during the initial EIR preparation process, the Luiseño consider the impacts to their traditional use sites to be significant and adverse. Therefore, given the lack of agreed upon standards for impacts and mitigation of impacts by both parties, the FEIR concluded that there may be a significant impact to EthnoHistorical resources (Gregory Mountain and Medicine Rock) as mitigation measures identified in the FEIR may not mitigate potential effects to a less than significant level (page 4.12-13).

RFEIR Sections 4.11 and 4.12

In the RFEIR the 2003 analysis was expanded to address the impacts the project would have on archaeological, cultural and historical resources in the event Gregory Mountain and Medicine Rock were listed on the National Register of Historic Places. This additional analysis was undertaken while a nomination of these locations for listing was pending. That nomination is no longer under consideration by the National Park Service, but could be revived. The RFEIR analysis concludes that from a subjective perspective, cultural and historical impacts to these locations would be significant and unavoidable in much the same way the impacts on these locations as EthnoHistorical resources would be significant and unavoidable.

E. AESTHETICS

FEIR Section 4.13

The project would have significant impacts to visual resources, visual character/quality, and landform quality. Since the landfill would utilize the canyon and area fill methodology for trash placement and the final elevation of the landfill will be 1,100 feet above mean sea level, the landfill face would be the most highly visible project component. At a close to moderate viewing distance, the landfill gas collection system components, as well as the rain runoff down drains would be highly visible pages (4.13-13 through 4.13-37). The aesthetic impacts of the landfill face/slope and the landfill surface would remain significant as to landform quality even after the implementation of mitigation measures detailed on pages 4.13-59 through 4.13-69 of the FEIR. Mitigation incorporated into the project includes landscaping to screen project elements and to block views of the site from SR76.

RFEIR Section 4.13

No changes were made to this section. These impacts would remain significant and unavoidable even after mitigation.

COMMENTS AND RESPONSES

Numerous comments were submitted on the Revised Partial Draft EIR draft which was circulated for public review in July and August 2006. Public agencies, organizations and individuals submitted comments. The comments covered virtually every aspect and potential impact of the proposed landfill. As required by CEQA, a response to each comment was prepared. Appendix E- Volumes II and III contain the Response to Comments. Chapter 12 of the RFEIR, EIR Contributors, contains a list of the organizations and persons consulted as well as the EIR Preparers and Technical Consultants for the RFEIR.

A public informational meeting was held in Fallbrook on February 23, 2011 on the proposed permit application package. About 200 people attended the meeting and 36 completed speaker slips and provided comments on the project. A transcript of that meeting was also generated and is included as a part of the Informational Meeting and Summary of Comments Binder which has been provided to you separately. Written comments have also been submitted by e-mail and U.S. Mail, and are also included in the Informational Meeting and Summary of Comments Binder.

Based on the comments received, the LEA staff gave further consideration to the following topics: Environmental Impacts and Environmental Mitigation Generally, Threats to Ground Water and Surface Water / Post Closure Care, Green House Gas and Climate Change, County Water Authority Pipelines, Fire Protection services, Regional Solid Waste Disposal Capacity Planning, Tribal Sacred Sites, Environmental Justice Issues other than Tribal Sacred Sites, and Traffic Safety. These topics are discussed in "steps taken relative to comments" section of the Informational Meeting and Summary of Comments Binder.

POTENTIAL OVERRIDING BENEFITS

Introduction

The analysis of this project performed pursuant to the California Environmental Quality Act (CEQA) identified significant environmental impacts that cannot be substantially lessened or avoided with the implementation of mitigation measures. These impacts were discussed briefly above. You cannot approve this project unless you find that these significant and unavoidable impacts are outweighed by specific economic, legal, social, technological or other benefits of the landfill project. This section of the staff report discusses some but not all project benefits that could provide a basis for such overrides. This section is not a statement of overriding considerations. Your decisions concerning overriding benefits are set out in the Separate Statement of Overriding Considerations.

In late 2003 and early 2004, the LEA involved the project applicant and the public in an assessment of the expected benefits of this project. That process began with a draft benefits analysis prepared by the applicant. The process included LEA staff review of successive versions of that analysis. Drafts

of the benefit analysis and LEA staff's analyses of those drafts were released for public review and comment. Extensive public comments were received, and the applicant submitted a rebuttal to some of those comments. All of this material was considered by the Director of DEH when decisions were made in 2004 concerning CEQA findings, a statement of overriding considerations, and the proposal and issuance of a solid waste facility permit. This prior benefits analysis material is a part of the record supporting your decisions on this project, but is not attached to this staff report.

On some issues, this staff report updates the discussion in the prior benefits analysis.² New information is available now concerning regional growth, current and projected waste quantities generated and disposed, and permitted and anticipated disposal capacity. The most recent such information is contained in a March 23, 2011 "Five-Year CIWMP/RAIWMP Review Report," attached for your consideration at Tab A. (Hereafter, "five year review report").

The law firm of Procopio, Cory, Hargreaves and Savitch, LLP ("Procopio"), which has represented the Pala Band in litigation related to this project, commented to the Department of Public Works on a January 11, 2011 draft of the five year review report. The final version of this report which was made available to the public in early May 2011 includes Procopio's comments on the draft report in Appendix B to the five year review report. All of this material informs the discussion of "improvements to infrastructure" below.

In addition to the update provided by the five year review report discussed above, more recent public comment has been received in connection with the RFEIR in 2007 and as a part of the processing of a new Solid Waste Facilities permit for the facility. You have already received and reviewed those comments.

Improvements to Infrastructure

The Gregory Canyon Landfill would provide additional disposal capacity in the County. 14 Cal. Code Regs §18755(a), implementing Public Resources Code §41701, states as follows regarding the Siting Element of the County Integrated Waste Management Plan: "The Siting Element shall demonstrate that there is a countywide or region-wide minimum of 15 years of combined permitted disposal capacity through existing or planned solid waste disposal and transformation facilities or through additional strategies."

The five year review report concludes that under the assumptions used in the report, there would be adequate permitted daily disposal capacity in County landfills for anticipated County-generated wastes during and beyond the required minimum 15 year estimation period. That analysis assumes increases in permitted daily capacity at the Sycamore landfill in 2012, 2020 and 2026, and assumes the Gregory Canyon landfill would come on line in 2015. These projections assume that the Miramar and Otay landfills close in 2022 and 2027 respectively. If daily capacity expansions at Sycamore are not approved, projected county daily disposal even with Gregory Canyon would exceed projected in-county daily disposal capacity in 2022, which is less than 15 years from now. With anticipated

² An updated analysis of economic benefits was determined not to be necessary because you determined those benefits would not be included in your Separate Statement of Overriding Considerations. A summary of the prior analysis is provided below.

Sycamore expansions but without Gregory Canyon, projected daily disposal would exceed projected daily disposal capacity in 2028, which the five year review report counts as 18 years from the report start date. The five year review report does not assume that the recently proposed East Otay Mesa landfill would come on-line during the study period.

The quantity of waste disposed per year is projected to increase in the five year review report, based on a straight-line regression fit to waste disposal data from 1995 through 2010. The projected rate of increase in waste disposed is substantially slower than in prior planning studies, which projected future disposal rates based on data through 2006, because actual waste disposal quantities in the County declined after 2006. The inclusion of data from those recent years pulls down the fitted trend line used to predict future disposal rates. In its comments on the draft of this study, Procopio notes that projected disposal rates in similar prior planning studies have proved to be too high, and asserts that the future disposal rates projected in this study are also too high. Other projections relied on in this study, e.g. the approval of proposed expansions at the Sycamore landfill, the projected availability of Gregory Canyon, and the omission of the proposed East Otay Mesa landfill, are also uncertain.

Based on the five year review report, regional solid waste planners expect there to be sufficient permitted daily disposal capacity in San Diego County over a 16 to 18 year planning horizon, which is more than the minimum horizon specified by statute, without the Gregory Canyon landfill.

Nevertheless, the Gregory Canyon landfill would add approximately 1 million tons of annual capacity and 30 million tons of total landfill capacity to the solid waste disposal system in the County. A new landfill that increases disposal capacity is a benefit to the County. The existence of that added capacity would provide a margin of assurance of adequate near term disposal capacity, despite the uncertainties involved in regional projections. A new landfill would also make it more certain that there would be adequate disposal capacity available in the county for continued economic and population growth in the medium and long term.

The Gregory Canyon Landfill would add this landfill capacity in the North County. In 1999, approximately 24% of the solid waste generated in the County was generated in North County. (The applicant compiled this figure from waste generation records collected by CalRecycle.) Using this percentage but applying it to the updated projections of total waste disposal in the five year review report, the North County would dispose of approximately 1 million tons of solid waste annually by 2020. That projection is fairly consistent with recent waste generation records compiled by the California Department of Resources Recovery and Recycling (CalRecycle) for waste generation in North County cities and the unincorporated portion of North County. Those data show that waste generation increased from 578,034 tons in 1995 to 1,059,946 tons in 2005, then declined to 891,246 tons in 2008, and to 819,905 tons in 2009.

The major landfills in the County, Miramar Landfill, Sycamore Landfill and Otay Landfill, are all located in central and South County. See Siting Element, page SE 14, Figure 4.1. The Gregory Canyon Landfill would be the only landfill located in North County, a region that generates a substantial portion of the solid waste in the County, and that is experiencing substantial development. Even though waste generation has declined in recent years due to lower economic activity, waste generation in the North County in the future is still likely to be similar to or in excess of the annual maximum permitted tonnage at Gregory Canyon Landfill of 1,000,000 tons per year.

Regional Air Quality and Vehicle Miles Travelled

In 2003 / 2004 the applicant asserted that the availability of a landfill in the north county would result in up to 1 million fewer vehicle miles traveled annually to haul wastes to a disposal facility, and hence in reduced vehicle emissions and improved regional air quality. Opponents called this analysis flawed, speculative, and unreliable, and noted that the City of Oceanside had said it would not use this facility. LEA staff noted at that time that other factors in addition to transport costs influence the flow of waste and concluded that uncertainties made it difficult to quantify likely changes in vehicle miles travelled. Staff concluded that air pollution from waste-hauling vehicles originating in the north county would be reduced, but noted that construction and operation of the project would also have cumulatively significant impacts on air quality.

Staff now concludes that reductions in vehicle miles traveled, and related reductions in vehicle emissions, would very likely result if a landfill were available closer to north county waste generators, because of the reduced transportation costs for shorter hauls. The applicant's prior estimate of a reduction of up to 1 million miles annually should be considered an upper bound estimate (it was identified as such in 2003/2004), not a most likely estimate. At least during the initial years of landfill operation, reductions in vehicle miles traveled could be substantially less than this estimate.

Biological Resources

Habitat and open space preservation, enhancement and creation

The landfill project would have impacts on biological resources, but identified mitigation measures would reduce those impacts to less than significant. The issue for CEQA override purposes is therefore not whether the project would result in the loss of some current high quality habitat, and not whether the project would provide some benefits to biological resources, but whether there are "excess" biological benefits, beyond those required to mitigate for the biological impacts of the project, that you can consider in the balance against the significant unmitigated impacts identified in the RFEIR. Staff advises that such benefits will result if this project goes forward.

Appropriate mitigation ratios for the impacts of this project on categories of habitat were developed for the FEIR, and have not changed as a result of further analysis or CEQA litigation. The amount of mitigation required to mitigate the biological impacts of the project to less than significant can be calculated based on project impacts and these mitigation ratios. Based on the impacts of the project, and these ratios, the project would provide excess biological mitigation that you can consider as an overriding benefit to offset other impacts of the project. The excess mitigation has three sources. First, analysis after 2003 showed that the project would have less impact on some biological resources (e.g., southwest arroyo toad upland habitat) than had been previously estimated. Planned mitigation was not reduced in response to this analysis, leaving an excess.

Second, after 2003 the project applicant decided to implement a more ambitious plan for habitat enhancement and creation in and along the San Luis Rey River corridor. Some of the additional mitigation this revised plan will provide is to make up for the decision of the courts that the preservation of open space that was already required as a result of Proposition C could not be counted as mitigation for CEQA purposes, and some of the additional on-site mitigation is needed to

replace previously planned off-site mitigation that the applicant deleted from the project plan. But, there is still an excess.

Based on projects impacts, mitigation ratios, and the mitigation the applicant has committed to implement, the project would provide a total of 1,242.9 acres of excess biological mitigation in the form of specific types of habitat preservation, enhancement, or creation. The table attached at Tab C, from a letter from Chase to USACE, 6/8/07, provides detail. Major categories of excess mitigation include 683.9 acres of coastal sage scrub and coastal sage scrub/chaparral; 401.5 acres of chaparral; 58.4 acres of mule fat scrub/southern willow scrub and 41.3 acres of coast live oak woodland.

Third, when the courts decided that the preservation of at least 1,313 acres of open space that was already required as a result of Proposition C could not be counted as mitigation for CEQA purposes, the applicant compensated as described above. The fact that the biological impacts of the project are mitigated for CEQA purposes without consideration of Proposition C open space preservation means that such preservation is a project feature, not CEQA mitigation. While the preservation of this open space is required by Proposition C, it is only required if the landfill project goes forward, and therefore it is benefit that is part of the project. You can consider that benefit in determining whether the benefits of this project override the significant unmitigable adverse impacts identified in the RFEIR.

In weighing this open space preservation benefit, you can consider the likelihood that this open space would or would not remain undeveloped in the absence of the landfill project. LEA staff noted in their 2003/2004 analysis that much of the area slated to be permanent open space consists of steep slopes and rock outcrops. The nearby Miriam Mountain quarry project suggests that even steep slopes and rock outcrops in this area could be exploited under alternative development scenarios, but at this site that specific use would require zoning changes via the initiative process.

The applicant has also agreed in principle to accommodate a connecting trail or trails, as part of a County-wide trail system or a San Luis Rey River trail system, within the project site, if possible. That agreement is not enforceable. However, the layout for the project includes open space and habitat enhancement and mitigation in the areas north of the San Luis Rey River and south of SR 76. A trail in that area would provide a pleasant experience for users. There is also a natural gas pipeline easement in that area that must be kept cleared for pipeline maintenance, which should make the construction of a trail feasible. The project applicant is also obliged by a CEQA mitigation measure to provide Tribal access to ethno-botanical resources that will be established in these mitigation areas. These conditions are conducive to a future trail. You can consider the creation of these conditions in association with this project to be a project benefit for override purposes.

Anticipated Host Fees or Tipping Fees to Help Fund the North County MSCP

This project requires “take” authorization under the federal Endangered Species Act, both for initial project construction and operation and periodically thereafter for continued operation. If the project becomes part of an approved multiple species conservation plan (MSCP), the requirement for renewed project-specific take authorization would be replaced by requirements for compliance with the approved MSCP, simplifying procedures and reducing risks to the project.

Based on discussions with the U.S. Fish and Wildlife Service concerning likely conditions for approval of this project by that agency, the project applicant has approached the County to discuss how this project could be incorporated into the planned north county MSCP, and how the project could make a sustained contribution to the MSCP process to ensure that the north county MSCP as whole can be implemented. No agreement is in place yet, and because of Proposition C the County has no authority to condition the approval of the landfill on an agreement to pay a host fee to the County. The applicant has nevertheless proposed to make payments to the County for MSCP purposes based on the amount of waste placed in the landfill, with larger advanced payments in early years. Staff believes that an agreement is likely to be put in place if this project goes forward. Assuming such an agreement is reached, you can consider the prospect that this project would be source of substantial funds for implementation of a north county MSCP to be a project benefit for override purposes.

Direct Economic Benefits

The economic benefits of a project can be considered as an overriding factor outweighing the adverse environmental impacts of a project. You have determined not to override environmental impacts based on economic benefits, so only a brief summary or prior analysis is provided here.

In 2003 the project applicant estimated that this project would generate a total economic benefit of up to \$44.9 million over its active period, taking employment and project-related spending into account. Direct employment from the project was projected to be between 15 and 22 jobs, not including construction jobs. The project would increase tax revenues in the region, and increase spending by workers and to meet project requirements.

Increased Competition and Reduced Disposal Costs

The 2003 / 2004 materials do not contain any significant discussion of the benefits that increased competition in the land disposal and recycling business could bring to San Diego government entities, businesses and residents. Competition in the county market for waste disposal is limited at this time. One company owns the Sycamore and Otay landfills, and access to the Miramar landfill for wastes generated outside the City of San Diego is limited. Taking current tipping fees and transportation costs into account, some industry participants now find it less costly to haul wastes to out-of-county disposal facilities than to dispose of that waste within the County, despite the conclusion in planning studies that there is currently adequate in-county permitted annual disposal capacity.

It is likely that the existence of a new competitor and of additional annual disposal capacity in the county will result in lower tipping fees at landfills than would otherwise be the case. If additional competition resulted in lower tipping fees than would otherwise be the case, there could be substantial costs saving for local governments and citizens. For example, a 5% reduction in tipping fees of \$65 per ton, for 5 million tons of waste annually, would save over \$16 million per year.

You can give potential disposal cost savings as much or as little weight in an override decision context as you determine is appropriate. In making that determination, you can also consider other potential impacts of lower tipping fees, such as the potential for lower disposal costs to adversely affect the market competitiveness of recycling and reuse alternatives.

STAFF RECOMMENDATIONS:

1. Consider the overriding considerations and the significant and unavoidable impacts identified and determine that the benefits outweigh and override these impacts;
2. Certify that this application package is consistent with CEQA and is consistent with the Certified Revised Final Environmental Impact Report (and associated Addendums); and
3. Submit the enclosed proposed permit and Solid Waste Facility Permit application package to the California Department of Resources Recycling and Recovery (CalRecycle) for concurrence.

Tab List

Tab A - Five Year CIWMP Review Report

Tab B - Table from letter from Chase to USACE, 6/8/07